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**EVIDENCE**

**Thursday, February 16, 2017**

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**Chair**

**Mr. Tom Lukiwski**



## Standing Committee on Government Operations and Estimates

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• (0845)

[English]

**The Chair (Mr. Tom Lukiwski (Moose Jaw—Lake Centre—Lanigan, CPC)):** Colleagues, I think we'll get going. Even though it's a minute or two prior to the scheduled start time, we have a very busy agenda today and I'd like to make sure we maximize all of our allotted time.

Before I introduce our witnesses and have them give their opening statements, I have a couple of housekeeping notes.

Because we have several presenters today and at least two one-hour panels, there will only be time for one complete seven-minute round of questions with each panel, so be prepared for that. The second panel might even be a bit more truncated than that, because I'd like to get 15 minutes at the end of today's meeting to talk about future business and some future witnesses. We have to make a few decisions on that.

We have two options. We can keep the testimony and the questioning short, or we can extend the sitting time of this committee by about 10 or 15 minutes. We'll play that by ear.

With that brief introduction, I want to welcome all of our guests. This is the 71st meeting of the Standing Committee on Government Operations and Estimates. We're dealing with our study of the Public Servants Disclosure Protection Act, also known as the whistle-blower act.

Without further ado, from the Department of National Defence, Mr. Manchanda, you have an opening statement. The floor is yours, sir.

If you could keep your comments, witnesses, to certainly no more than 10 minutes, and less if possible, that would be very much appreciated.

Please, sir, go ahead.

**Mr. Amipal Manchanda (Assistant Deputy Minister, Review Services, Department of National Defence):** Thank you.

Mr. Chair, and members of Parliament, thank you very much for the invitation this morning.

It is my distinct pleasure to address you today on the subject of the Public Servants Disclosure Protection Act in the context of the Department of National Defence and the Canadian Armed Forces.

I am the designated senior officer within the Department of National Defence and the Canadian Armed Forces for receiving and dealing with disclosures of wrongdoing.

Before I speak about the act and provide my organization's perspective, I would like to briefly address my responsibilities inside the organization.

First, in my role as assistant deputy minister, review services, I am responsible for providing the deputy minister and the chief of the defence staff with assurance services regarding the adequacy of the Department of National Defence and the Canadian Armed Forces' internal controls; governance and accountability processes; risk management practices, compliance with government legislation, regulations and policies; as well as program effectiveness. It is important to note that my role is independent and I report directly to the deputy minister and the chief of the defence staff.

[Translation]

My responsibilities are carried out through the delivery of professional internal audit and evaluation programs, the conduct of special examinations and inquiries, including those related to internal disclosures, and prevention and awareness activities, as well as management of the Defence Ethics Program. My office is also the formal departmental point of contact with the Office of the Auditor General.

[English]

I maintain unfettered access to any and all information within the Department of National Defence and the Canadian Armed Forces, and in line with my independence function I do not manage any operational program area directly.

Canadians have an absolute right to expect all public servants and members of the Canadian Armed Forces to behave ethically and in accordance with their legal obligations. To encourage and support these values, we are committed to fostering an environment in which all employees may honestly and openly raise ethical and legal concerns without fear or threat of reprisal, consistent with the act.

As members of this committee know, the goal of the legislation is to encourage employees in the federal public sector to come forward, if they have reason to believe that serious wrongdoing has taken place. It provides clear guidance to public servants on several options for addressing and reporting wrongdoing.

The Public Servants Disclosure Protection Act prohibits taking reprisal against a public servant who has made a protected disclosure in good faith or who has co-operated in an investigation. It also provides a fair and objective process to respect those accused of wrongdoing.

We have implemented the Canadian Forces disclosure process, which provides for the disclosure of wrongdoing by a Canadian Armed Forces member, in order to comply with section 52 of the act, which requires the Canadian Armed Forces to establish procedures for the disclosure of wrongdoing, including the protection of persons who disclose wrongdoing, deemed comparable by the Treasury Board to those established under the Act.

The Canadian Armed Forces internal disclosure regime is built on the same tenets as the Public Servants Disclosure Protection Act and includes the following.

There is a definition of what constitutes wrongdoing. There is a process for disclosure of wrongdoing with established procedures. There is the designation of a senior officer, which is my role. The committee will note, as I mentioned earlier, that I do not form part of the Canadian Armed Forces' chain of command. There is a prohibition against reprisal for any Canadian Armed Forces member making a disclosure of wrongdoing. It is important to know that any allegation of reprisal under the Canadian Armed Forces regime is investigated directly by me. Finally, there are confidentiality and annual reporting requirements.

In the belief that the Department of National Defence and the Canadian Armed Forces will benefit from a common ethical foundation that respects the unique mandate of each, the deputy minister and the chief of the defence staff have established a joint Department of National Defence and Canadian Armed Forces Code of Values and Ethics.

It is important to highlight, Mr. Chair, that the Public Servants Disclosure Protection Act assigns a departmental responsibility for implementing the provisions of the act to the chief executive.

Within the Department of National Defence, the chief executive is the deputy minister, who is responsible to designate a senior officer—me—to direct the development and implementation of internal procedures for the receipt and investigation of wrongdoing and to ensure that the obligations under the Act are fulfilled.

Under the Canadian Armed Forces disclosure process, the chief of the defence staff has designated me as the proper authority for purposes of the Queen's regulations and orders.

In these dual roles, I direct the development and implementation of internal procedures for the disclosure of wrongdoing, ensure that the obligations under the act and the Canadian Armed Forces disclosure process are fulfilled, ensure that corrected measures are taken when wrongdoing is found as a result of a disclosure, and oversee on behalf of the deputy minister and the chief of the defence staff the preparation of the annual report required by the office of the chief human resources officer of Treasury Board.

This brings me to the question of awareness. One may have the best legal and ethical framework in the world, but if few people are aware of its existence, it is all beside the point. Mindful of this, we

have taken great care to promote our Department of National Defence and Canadian Armed Forces Code of Values and Ethics and its relationship with our internal disclosure program in particular.

The Department of National Defence and Canadian Armed Forces Code of Values and Ethics represents an important element of the Defence ethics program, which will allow us to proactively shape, promote, and develop an ethical culture that reflects and supports public sector and Canadian Armed Forces values and ethics. Leadership and management at all levels are expected to visibly promote and support the values and ethics of this code.

Our training and awareness activities include an internal disclosure website that provides guidance on how to submit a disclosure as well as relevant contact information to assist those who may have additional questions regarding wrongdoing reprisals.

We have also posted online disclosure of wrongdoing guidelines for our DND employees and Canadian Armed Forces members. We have integrated an internal disclosure curriculum into other training for employees and members; for example, on-boarding for new employees, defence ethics training, and also prevention workshops at bases and wings.

I am pleased to say that we have dedicated resources to our internal disclosure process, befitting a large and complex organization. These include a full-time dedicated internal disclosure office and investigation section responsible for investigating all manner of alleged wrongdoing in the Department of National Defence and the Canadian Armed Forces.

The team responsible for conducting these investigations includes former RCMP and military police officers along with a team of forensic examiners who are specialists in the area of finance and accounting.

In developing and refining our program, we continue to work within the larger government setting through our participation in the interdepartmental working group on internal disclosure. In addition, we provide guidance to and share best practices with other government departments on a regular basis.

In closing, I would like to reiterate that our goal is to ensure that every employee and member of the Department of National Defence and the Canadian Armed Forces has the opportunity to report wrongdoing wherever they believe it exists. An internal disclosure program that is well understood and trusted will form the basis for improvements and priorities as we continue to mature our program at the Department of National Defence and Canadian Armed Forces.

In turn, this will ensure that the Canadian public remains confident in the DND Canadian Armed Forces process as the department exercises its roles and responsibilities.

Mr. Chair, that concludes my presentation. Thank you very much for the opportunity. I look forward to answering your questions.

Thank you.

• (0850)

**The Chair:** Thank you, sir, and thank you for the economy of your words.

Next up we have Madam Glover.

You have 10 minutes or less, please, ma'am.

**Ms. Barbara Glover (Assistant Deputy Minister, Departmental Oversight Branch, Department of Public Works and Government Services):** Thank you, Mr. Chairman.

I welcome the opportunity to present and discuss with the committee the measures that Public Services and Procurement Canada has put in place to uphold the public's trust in our operations. Accompanying me is Biagio Carrese, director of special investigations.

PSPC plays a key role in the operations of the federal government as its treasurer, accountant, central purchasing agent, linguistic authority, and real property manager. I could talk about all the things the department does, but I'll just skip that part of the presentation.

[Translation]

The department has been working diligently over time to protect and safeguard the use and expenditure of public funds, to ensure strong stewardship and transparency, and to uphold the public confidence in relation to its contracts and real property agreements.

[English]

To prevent and respond to potential wrongdoing, PSPC has a strong framework in place. We have embedded measures into everything we do, from our corporate culture, which is at the very core of our approach, to our management practices, systems, and processes involving daily operations. It starts with the tone from the top and includes values and ethics, our code of conduct, training, investigations, etc. This includes ensuring that departmental values are reflected in the orientation for new employees and on-boarding newly appointed executives. PSPC also reduces the opportunities for fraudulent business activities through security screening of contractors and an integrity regime for Government of Canada contracts. There is also a procurement code of conduct that applies to contractors as well as employees.

The department seeks to ensure that its employees act in the public's best interest at all times and ensure transparent, accountable, and responsible management; that its employees act in compliance with the letter and spirit of all applicable laws; that its employees prevent, avoid, and report situations that could give the appearance of a conflict of interest or result in a potential or actual conflict of interest; and that its employees disclose potential wrongdoing.

As the department's senior officer under the Public Servants Disclosure Protection Act, I am very proud of our internal disclosure program. We have carried out extensive outreach to ensure that employees know their obligation of coming forward with potential wrongdoing. This responsibility has been embedded in our code of conduct. We have explained the protections offered under the PSDPA as well as the methods we employ internally to protect the discloser's identity as well as that of the alleged wrongdoer.

I believe that our number of disclosures over the years indicates that our employees do come forward with allegations and have confidence that we look into each one and do not tolerate reprisals against disclosers. When allegations are founded, disciplinary and corrective measures are taken. When systemic issues arise, recommendations are made to address process and procedure deficiencies.

Investigations under the PSDPA are but one mechanism to identify and address wrongdoing. Other mechanisms include internal investigations; routine audits undertaken by our human resources, acquisitions, and finance branches; and complaints that come in related to procurement, including proactive ones where the department feels there is a high risk.

Our investigative team also conducts investigations related to system vulnerabilities that may lead to privacy breaches and/or fraud. These are all rigorously investigated by a dedicated, multidisciplinary team of investigators. The team receives an average of 100 complaints per year, of which about a third are under the PSDPA.

I'll close by saying that PSPC is committed to the efficiency of its internal disclosure program, as this program is a critical component of ensuring confidence in the overall management of our organization.

Thank you.

• (0855)

**The Chair:** Thank you very much, Madam Glover. I thank you for your brevity.

Our final presenter, representing the Department of Indian Affairs and Northern Development, will be Madame Lamothe.

Go ahead, please.

[Translation]

**Ms. Line Lamothe (Acting Director General, Human Resources and Workplace Services, Department of Indian Affairs and Northern Development):** Mr. Chair, thank you for inviting us. This gives me an opportunity to speak to you about the enforcement of the Public Servants Disclosure Protection Act within the Department of Indigenous and Northern Affairs Canada.

My name is Line Lamothe and I am the acting director general of the Human Resources and Workplace Services Branch. I am accompanied this morning by Mr. John Tremble, INAC's senior officer for disclosure and director of the Centre for Integrity, Values and Conflict Resolution.

[English]

INAC supports indigenous people—first nations, Inuit, Métis—and northerners in their effort to improve social well-being and economic prosperity; to develop healthier, more sustainable communities; and to participate fully in Canada's political, social, and economic development to the benefit of all Canadians.

INAC has just over 5,000 employees, and 60% are based in the national capital region and 40% are based in 10 regions across Canada.

The goal of the Public Servants Disclosure Protection Act is to encourage employees in the federal public sector to come forward if they have a reason to believe that serious wrongdoing is taking place or has taken place. The act protects public servants against reprisal and provides a fair and objective process for those accused of wrongdoing.

Employees can make a disclosure to either their supervisor, the INAC-designated senior officer, or directly to the Public Sector Integrity Commissioner, an independent agent of Parliament. Pursuant to subsection 10(2) of the Public Servants Disclosure Protection Act, INAC's deputy minister has designated the director of the centre for integrity, value, and conflict resolution, Mr. John Tremble, as the senior officer responsible for receiving and dealing with disclosure of wrongdoing made by INAC employees. The director is supported by three staff in managing the internal disclosure process.

In accordance with subsection 10(1) of the act, INAC created standard operating procedures for the implementation of the act. The procedures are available to all INAC employees on the departmental Internet site—and I believe you have a copy of them—along with links to various resources from the Office of the Public Sector Integrity Commissioner on making a protected disclosure and on the protection afforded to the discloser.

• (0900)

[Translation]

The standard operating procedures provide that the senior officer, with the assistance of the centre, will provide confidential and neutral advice and guidance to public servants considering making a disclosure. The procedures also provide that supervisors who receive a disclosure of wrongdoing are required to promptly transfer it to the senior officer and advise the employee-discloser of this transfer.

When a public servant contacts the centre, the senior officer, with the assistance of the centre, performs initial screening and preliminary analysis of the information received and determines whether it meets the threshold for a disclosure. The public servant is then informed of the disclosure process, including the protections afforded by the act.

[English]

Depending on the nature of the allegation, the senior officer may engage a subject matter expert to review the allegation and gather additional information. For example, if an allegation deals with contracting, the senior officer would work with contracting experts to determine whether the allegations could meet the legislated definition of wrongdoing.

If the senior officer believes there are sufficient grounds to launch an investigation, he will inform the deputy minister of the disclosure, the preliminary analysis, and seek approval to initiate an investigation of the matter described in the disclosure. An independent investigator will then be engaged and mandated to conduct an investigation in accordance with the Public Servants Disclosure

Protection Act. The investigation will be conducted as informally and expeditiously as possible.

Once an investigation is completed, the senior officer will review the results of the investigation, provide the findings, and make recommendations to their deputy minister. When contacted by the Office of the Public Sector Integrity Commissioner, INAC cooperates by providing information to assist PSIC in evaluating the disclosure they received. INAC provides PSIC with information to assist them in determining whether to launch an investigation. PSIC may also request information to assist them in conducting an investigation.

[Translation]

As part of its ongoing awareness and training, the internal disclosure process is discussed during mandatory values and ethics training that is delivered to INAC staff across the country.

Over the past three years, 73 sessions were delivered to some 1,200 employees, almost a quarter of all departmental staff.

Since the inception of the act, INAC has received on average three disclosures per year.

Mr. Chair, members of the committee, thank you for your attention.

[English]

**The Chair:** Thank you, Madame Lamothe.

Thank you all for co-operating with our very tight time schedule. We will have one full seven-minute round of questions. We'll start with the government side.

Mr. Whalen, you have seven minutes, please.

**Mr. Nick Whalen (St. John's East, Lib.):** Thank you very much, Mr. Chair.

Thank you all for coming today to help us with our study on the Public Servants Disclosure Protection Act.

To start off, Mr. Manchanda, we've had sort of a routine set of questions during the meetings to date that focused on fighter jet procurement. Just to find out whether or not any of them are relevant, I have two simple questions.

The first is, have there been any allegations of wrongdoing in your department related to fighter jet procurement?

• (0905)

**Mr. Amipal Manchanda:** Thank you for the question, Mr. Chair.

I'm not aware of any allegations that have come forward.

**Mr. Nick Whalen:** We've heard about a very strict non-disclosure agreements, confidentiality agreements, that apply to employees in National Defence, probably for good reason. Is it your understanding that, notwithstanding these non-disclosure agreements, it would still be open to employees affected by them to approach the Integrity Commissioner or to come to you with allegations of wrongdoing, notwithstanding the fact that they would probably have to disclose things covered by the NDA?

**Mr. Amipal Manchanda:** Thank you for the question, Mr. Chair.

I am aware that the committee has discussed the subject at previous meetings. The agreements that have been signed highlight the obligations of public sector servants and Canadian Armed Forces members to safeguard Government of Canada information—no more, no less. As far as the provisions of the act are concerned and a person coming forward with the protected disclosure, nothing would prevent any individual from coming forward and making a disclosure of wrongdoing.

Does that answer your question?

**Mr. Nick Whalen:** Yes, it does. Thank you very much.

Now I'd like to move to a general question.

[Translation]

This concerns all of the persons who deal with this activity at the department.

My question is addressed to Ms. Lamothe and Ms. Glover, as well as to Mr. Manchanda.

[English]

Do you find that you have an inherent conflict of interest in having to report to your department head rather than to the Integrity Commissioner in the case of allegations of wrongdoing in your departments?

This act occupies itself with serious wrongdoing. It raises the very question, if allegations of wrongdoing are brought to you, and they're serious, why would you go to your department head with those? Wouldn't it simply necessitate going to another independent body with those allegations?

**The Chair:** Mr. Whalen, do you want to select one of the—

**Mr. Nick Whalen:** Ms. Glover, please.

**Ms. Barbara Glover:** Thank you for the question, Mr. Chairman.

I'll try a short answer.

Every deputy minister is responsible for operations in their department. If there is something going wrong, they're responsible for looking into it, whether under the act we're talking about or through internal investigations.

The way it works in my department, and probably others, is that I finish my report, and it's either founded or unfounded. If it's founded, it moves through a disciplinary process that can lead and, frankly has led, to termination. It's not obvious to me that there's a problem with that. It seems to me that it's working in my department.

I'll let the others speak to theirs.

**Mr. Nick Whalen:** Mr. Manchanda.

**Mr. Amipal Manchanda:** The act requires the chief executive to put in place a regime that will allow—

**Mr. Nick Whalen:** Sorry, Mr. Manchanda. I understand that the act requires it. I'm asking you whether or not you feel there's an inherent conflict of interest required by the act, because you're asking the CEO of a department to investigate wrongdoing in which they may be complicit rather than going straight to the Integrity Commissioner.

**Mr. Amipal Manchanda:** There are a couple of elements in there in which independence is assured. One of the things I mentioned in my opening remarks is that I'm not involved in any operational activity within the organization. So the deputy minister and the chief of the defence staff have intentionally ensured that the individual who carries out these investigations is in no way attached to any part of the operations or any elements of wrongdoing that may occur within those operations, and then they provided me with an access directly to them to disclose that wrongdoing.

You're correct that it's not arm's length in terms of being completely independent and outside the organization, as the Public Sector Integrity Commissioner is. But I think in an organization where the deputy minister has been tasked under the Financial Administration Act for ensuring that a proper set of internal controls is in place and is functioning regularly, it makes sense to have that regime and to give the deputy head that responsibility to identify it and then deal with the corrective action.

**Mr. Nick Whalen:** Madame Lamothe.

**Ms. Line Lamothe:** Yes, the deputy minister is accountable for the operation of the department, and it's the personnel within the department who will take action. I don't see that there would be a conflict of interest.

● (0910)

**Mr. Nick Whalen:** I would disagree. If somebody is in the position where they may be complicit or may have authorized activities that led to wrongdoing, then there's an inherent conflict. But I understand there's a larger integrity framework.

Ms. Glover, this disclosure act is only one of a number ways in which government tries to ensure the integrity of its operations. Can you describe other specific activities that help ensure the integrity of the operations of government, and how this piece fits into the overall framework?

**The Chair:** You have one minute.

**Ms. Barbara Glover:** I can talk really quickly, Mr. Chair.

I said in my opening remarks that just on the investigative side, we at PSPC, specifically Biagio, get procurement complaints from the old Public Works. That's not going to surprise you. We get them from all kinds of places, including outside. However they come into the department or to whomever, 100% are reviewed. Sometimes they're in envelopes.

We look at administrative investigations when something is going wrong—if money is missing, for example—and finally, of course, the investigations under this act. But as I said, it starts with having a strong culture, and we aim to have a strong culture of values and ethics and strong training around that and expectations at every level—senior management, staff, new employees—and we work with the unions in that regard.

You can imagine, I think, that in the biggest procurement and real property department, we work on the framework for how we do it all the time as a management team and, frankly, as a department.

**The Chair:** Thank you.

Mr. McCauley, you have seven minutes.

**Mr. Kelly McCauley (Edmonton West, CPC):** Welcome and good morning.

Mr. Manchanda, who do you report to, please?

**Mr. Amipal Manchanda:** I report directly to the deputy minister and the chief of the defence staff.

**Mr. Kelly McCauley:** That's great, thanks.

Ms. Glover with Public Works, you're obviously aware of Phoenix. We spoke to whistle-blowers, and they talked about how if we had a better whistle-blower regime this wouldn't have happened. We've also heard that there's a strong belief across the board that there's a culture of intimidation, or that a fear of reprisals is very strong throughout the public service.

We had all the warning signs. We had third-party reports that there were issues with Phoenix. We had the unions coming forward. We had the committee bringing it up publicly. What is there in our culture, say within Public Works, that people weren't able to come forward? I know it's not you, but you mentioned that the deputy minister is ultimately responsible. The deputy minister—not the current one, the previous one—is also the one who signed off on the recommendation for Phoenix. You almost have the fox in charge of the henhouse in a way. In a department, how are people going to whistle-blow to the person who is ultimately responsible for that program, who also was ultimately responsible for going ahead?

**Ms. Barbara Glover:** I have two or three threads to that question.

I don't accept—

**Mr. Kelly McCauley:** I hate to say this. Try to be brief because I have a couple of other questions.

**Ms. Barbara Glover:** Okay, I'll try.

It can be the case that employees or unions or executives do not necessarily agree with the policy of the Government of Canada. It happens.

**Mr. Kelly McCauley:** Did our system fail in this case?

**Ms. Barbara Glover:** Disagreement with policy, disagreement with implementation, or maybe, after the fact, not being very happy with implementation, and rightly so, obviously, in this case.... It's not evident that that is equivalent to a wrongdoing, whether under the act or in our other investigative roles that I've talked about. I will say, as you know, that the Office of the Auditor General is in fact doing a review, and we will see what we will see when those recommendations come out.

I do want to say in regard to the deputy being the fox in the henhouse that I have never worked for a deputy in this department—I've had three, and three associates—who tried to mislead, direct me to mislead, or direct our investigations to come to a different finding.

• (0915)

**Mr. Kelly McCauley:** Okay. Are you surveying your staff on the effectiveness of the disclosure act?

**Ms. Barbara Glover:** The PSES, I believe, has been brought to this table by TBS. It does ask questions about fear of reprisal. You mentioned yourself that those are not impressive, either across government or in our own department.

**Mr. Kelly McCauley:** Do you know what your survey numbers are at Public Works?

**Ms. Barbara Glover:** Yes, 44% would not be worried about bringing something forward. The exact question escapes me.

**Mr. Kelly McCauley:** Forty-four percent are not.

**Ms. Barbara Glover:** I'm sorry, so the majority—

**Mr. Kelly McCauley:** That means 56% are.

**Ms. Barbara Glover:** We recognize that. We are doing a lot of work to try to create a climate that is—

**Mr. Kelly McCauley:** How many years have you been doing the reports? Is this the one time? Was it 50% last year, 50% the year before, or...?

**Ms. Barbara Glover:** The results have not been impressive over the years. We continue every year, every month, every week—

**Mr. Kelly McCauley:** I'm quickly running out of time. There's obviously a problem here if it's not getting fixed, but is it because there's a lack of confidence in the way the act is set up?

**Ms. Barbara Glover:** I don't think it's about the act. The question in fact isn't about the act. It's about just bringing forward a complaint, so it's more general than that.

Look, I believe that in the private sector, that in the public sector, and in NGOs, anyone who is going to bring forward a complaint typically will worry. The job here is to find a way to remove that worry.

**Mr. Kelly McCauley:** Ms. Lamothe, just quickly, you've had two issues brought forward in the last three years for, I think you said, 5,500 staff. Does that not set off, with your massive budget, alarm bells that we're missing something, that we're not doing enough to encourage people or to get information out, or to protect people? Or is your department perfect?

**Voices:** Oh, oh!

**Ms. Line Lamothe:** My response to this is in terms of getting information out, in terms of outreach. We do a lot of that in the department.

The other part of the answer is in terms of the other mechanisms that are within the purview of public servants. For example, there's the grievance process under the Public Service Labour Relations Act.

**Mr. Kelly McCauley:** I know that, but with two out of 5,500 staff over a three-year period...? Do you believe that, again, as we're seeing with Public Works, there's a serious concern public servants have of coming forward?

**Ms. Line Lamothe:** Well, the other aspect is in terms of the definition of wrongdoing as it is defined in the act. So when we look at this in terms of what wrongdoing is, that's another factor to consider.

**Mr. Kelly McCauley:** Okay.



Mr. Manchanda, we've got only one minute. Walk us very briefly through how it works with the military. There was a report recently on, I think, there being \$70 million worth of thefts from inventory within the military last year. Say someone knew about it. What would be the process? I ask because I read somewhere that keep it almost within their own department and, unfortunately, if you're like my associate here, Mr. Clarke, who served, you know very well that if you're a sergeant reporting within your department, there's not a lot of protection.

**The Chair:** Please give a short answer.

**Mr. Amipal Manchanda:** Very quickly, the internal disclosure regime that has been developed for the Canadian Armed Forces is very, very similar. Every step is to look at the key tenets. Every single part that's covered off on the civilian side of the Public Servants Disclosure Protection Act, all those tenets form part of the Canadian Forces' disclosure protection act process. The only thing I would say is that the Canadian Forces' protection process came in effect a little bit later because it was initially excluded, but we are getting disclosures of wrongdoing. They are coming in to the Canadian Armed Forces, so it's a question of continuing awareness and ensuring they know that there is an independent channel. As I mentioned in my opening comments, the chief of the defence staff appointed me as the senior officer, and I'm completely outside the chain of command.

**The Chair:** Mr. Weir, you have seven minutes, please.

**Mr. Erin Weir (Regina—Lewvan, NDP):** Thank you.

We have a panel of very senior officials from three different departments.

I want to thank you for taking the time to appear before our committee. My sense is that whistle-blower protection would comprise a relatively small fraction of everything that you manage in your jobs. I'm curious to know if there are people in your departments who are specialists or experts on the whistle-blower protection act.

● (0920)

**Mr. Amipal Manchanda:** Perhaps I can start.

As I said, we have a dedicated individual who is responsible for the intake process. That person knows the act very well. In fact, as per the Public Servants Disclosure Protection Act, in our case, under the Canadian Armed Forces' regime, we had to develop a parallel process, one that was very similar. We had no choice but to gain a very good understanding about individuals within our organization who worked with our legal counsel and Treasury Board officials to ensure that we understood all elements of that act, and that we put in place a regime to afford members of the Canadian Armed Forces and civilians the ability to come forward in a confidential manner and report a wrongdoing.

**Ms. Barbara Glover:** I'll turn to Biagio.

**Mr. Biagio Carrese (Director, Special Investigations Directorate, Department of Public Works and Government Services):** Within PSPC we have a dedicated team of 10 investigators with varying backgrounds, from criminal investigations to corruption and high-level fraud, and procurement experts. We have access to forensic accountants. We have, at any time, six people dedicated to working on internal disclosures. We have a manager who does a

four-stage quality assurance process within the life cycle of an investigation.

**Ms. Line Lamothe:** I will ask Mr. Tremble to answer.

**Mr. John Tremble (Director, Centre for Integrity, Values and Conflict Resolution, Department of Indian Affairs and Northern Development):** Within Indigenous and Northern Affairs Canada, at our centre for integrity, values and conflict resolution, I am supported by three staff who assist me in receiving complaints.

When my staff believe there is something that could meet the definition of a wrongdoing under the legislation, it's brought to my attention. Then we go through a very rigorous analysis to determine whether or not the allegation being brought forward would meet the definition under the act.

**Mr. Erin Weir:** That prompts me to follow up on Mr. McCauley's question about the number of cases dealt with at INAC. It sounds like you may have more staff processing the complaints than actual complaints. I wonder if there's some problem that's preventing people from blowing the whistle and coming forward.

**Mr. John Tremble:** I would say that about 10% to 15% of our time involves dealing with possible wrongdoing. We do an awful lot of training and promotion. We engage staff across the country on our processes. We talk about wrongdoing. We encourage people to come forward and raise issues with us.

People often come to us and raise concerns about a possible conflict of interest. There may be matters that come up that are of a human resources nature, and those issues are dealt with through the appropriate venue. We don't automatically move right into the PSDPA, unless the allegation or the concern being raised would meet the definition of a wrongdoing, in which case we go through a very rigorous due diligence process.

**Mr. Erin Weir:** Is it your sense that the definition of wrongdoing in the act may be too narrow?

**Mr. John Tremble:** We apply the act as it's written. When we receive allegations, we evaluate the allegations based on the definitions in the law.

**Mr. Erin Weir:** I have a similar kind of question for Public Services and Procurement.

Our committee has certainly been studying the Phoenix payroll system and Shared Services. We've heard some very strong testimony that many people knew about the problems with Phoenix and that the boondoggle could have been avoided if they had felt comfortable coming forward.

Mr. McCauley asked about this, and it seemed that your response, Ms. Glover, was to say that while there were a lot of problems with Phoenix, there wasn't wrongdoing according to the act.

That may be true, but it seems to me that ultimately we want to foster a culture where people feel comfortable coming forward and calling attention to those kinds of problems, before they go off the rails in the way that Phoenix and Shared Services have. I just want to give you another chance to address this.

**Ms. Barbara Glover:** Let's see if I can say something with a different tack. Maybe I'm only going to say the same thing. I apologize for that.

Some did not want to go forward with Phoenix. That's fair. We're hearing that now. I heard it more afterward than before. After it was implemented and after there were implementation problems, I have heard and read, as you all have, that people wish they could have gone back in time. I didn't say there was no wrongdoing; I say that I don't know and have seen no evidence of it. No one has come to us with evidence of wrongdoing.

But I also said there was an OAG review under way and that there would be recommendations coming out of it. Really, the act and internal investigations are not a place that people come forward under and say, "I wish something was done differently" or "I believe strongly something"—

• (0925)

**Mr. Erin Weir:** I'm not talking about the kind of retrospective argument. What I'm suggesting is that Phoenix and Shared Services were both huge projects that hundreds or maybe thousands of people were involved in. There were clearly big problems with them. It stands to reason that some of those people probably knew about the problems sooner than when they became public, and it certainly would have been a good thing had there been some sort of willingness or process where people could have come forward and raised those concerns sooner.

**The Chair:** It's a salient point, Mr. Weir, but unfortunately we're completely out of time.

You may want to consider responding to Mr. Weir's question in a written form.

Witnesses, at the conclusion of your testimony, if there's other information that you feel you would like to share with the committee, please forward it to us.

Our final intervention will come from Madam Ratansi. You have seven minutes, please.

**Ms. Yasmin Ratansi (Don Valley East, Lib.):** Thank you all for being here. I'll ask a quick question, because seven minutes goes very fast.

As you know, we've had whistle-blowers come before us. We've had the Public Sector Integrity Commissioner before us. Trust in a public service is very important, and you talked about various tools, the whistle-blower act being one them, to ensure the integrity of the system.

But you also mentioned that when a reprisal occurs, you do not tolerate it. We have heard from people who feel that when they blow the whistle and there is reprisal, maybe senior management is eliminated, but then they're ostracized or fired or moved.

In your investigations, have you come across those instances?

**Ms. Barbara Glover:** No.

**Ms. Yasmin Ratansi:** Okay. Fair enough.

Have there been any instances where you felt uncomfortable in your investigation because it probably dealt with the top senior management?

**Ms. Barbara Glover:** No.

I can assure you that I have a basis for answering that question in that way.

**Ms. Yasmin Ratansi:** Perfect. Okay.

I need to go to Mr. Manchanda.

In the Department of National Defence, there exist two systems, one for the Canadian Armed Forces and one for National Defence. I guess there is a difference between the two systems because of security purposes.

You're an accountant and an auditor. Am I right?

**Mr. Amipal Manchanda:** Yes.

**Ms. Yasmin Ratansi:** For the benefit of our committee, could you tell us, number one, why does it come under internal audit?

**Mr. Amipal Manchanda:** It doesn't come under internal audit.

As part of my responsibilities, I'm responsible for oversight of internal audit within the department as well as evaluation and the departmental values and ethics program. I have a number of directorates within my organization, and I have individuals who lead each of those. One of them is a directorate of special examinations and inquiries, which is headed by Mr. Glenn MacDougall. It's within this that the internal disclosure aspect is rolled out, or the intake procedures are done.

**Ms. Yasmin Ratansi:** Okay. Could you explain the difference between the Canadian Armed Forces and the Department of National Defence?

**Mr. Amipal Manchanda:** Yes, and thank you for the question.

When the Public Servants Disclosure Protection Act first came into force in 2007, a number of organizations were excluded from the act, and the Canadian Armed Forces was one of those organizations. The onus was on the Canadian Armed Forces to put in place a parallel regime. I think the wording in the Public Servants Disclosure Protection Act indicates a regime similar to that under which the Treasury Board rolled out the Public Servants Disclosure Protection Act.

I'll just summarize very quickly. The tenets on which we built the Canadian Armed Forces process are very similar to what's under the civilian side under the Department of National Defence. We have a definition of wrongdoing; there are very minor differences in the definition of wrongdoing. We put in place established procedures for disclosure; there is no difference between the two regimes. A senior officer has to be appointed, so that's me for both of those; so that's identical.

There is a prohibition against reprisal. That's one difference that I'd like to point out to the committee. Under the Public Servants Disclosure Protection Act, if there is a case of reprisal, in the case of someone coming forward with a protected disclosure, those cases are investigated directly by the Public Sector Integrity Commissioner. Under the Canadian Armed Forces process, reprisal is dealt with by me. So all reprisal complaints are dealt with and investigated by me. I think that is an important point for the committee to note.

There is a requirement for confidentiality in the process, so we ensure confidentiality under both.

There is a need for annual reporting, so we prepare one annual report under both.

That sums it up.

● (0930)

**Ms. Yasmin Ratansi:** Okay, there are two minutes left.

I was looking at the number of complaints that came in. Of the 22 disclosures that you received, you have acted upon 16, but only four, or 25%, were investigated. Can you give us an idea why?

**Mr. Amipal Manchanda:** I'll use the civilian side as an example.

Since its inception we've had 183 disclosures come forward, which we accept, but not every disclosure winds up in an investigative process. In a number of cases, we take a look at whether they fit the definition of what is wrongdoing under the Public Servants Disclosure Protection Act. If there are other recourse mechanisms that are already in place... A lot of times individuals will come forward; let's say it's under a human resources-related issue, and we already have a very formal defined process under the HR regime whereby individuals, if they're not satisfied with an HR process or an HR matter, have recourse mechanisms available to them already internally within the organization.

**Ms. Yasmin Ratansi:** From everything that we are hearing—and we have heard from different witnesses as well—I think the problem is that the Public Servants Disclosure Protection Act needs to be well understood. Otherwise, there is a view that “whatever I am complaining about, you guys are not taking any action, it's not moving forward”. Perhaps there is a communication gap that perhaps all departments need to take care of.

I guess my time is up.

**The Chair:** There's time for a brief answer, Mr. Manchanda, if you wish.

**Mr. Amipal Manchanda:** I would agree. Part of the issue, and I think it's especially important, is that as you get new people coming into the public service and you renew departments, it's important for employees to understand the regime on which the public service is built, like a code of values and ethics, as well as all the mechanisms that are available to them for recourse—of which there are many—and which one is the appropriate one to turn to.

**The Chair:** Thank you very much.

I want to thank all of our witnesses for appearing here today. I do apologize for what might seem a bit of a truncated version of a question-and-answer period, but unfortunately we do have time

constraints. It seems that in studies such as this, the more answers that are given, the more questions are raised.

With that in mind I certainly encourage all of our committee members, should they have additional questions to ask of you, to please submit them in writing.

Subsequent to that, should any of you have additional information you think would be of benefit to our committee, I strongly encourage you to give that in written form to our clerk. Specifically, as we've heard in questions today, have you any suggestions as to how the act might be improved, in your estimation? This committee would very much like to hear your suggestions.

With that, once again, thank you all for your appearance.

We will suspend for just a couple of minutes while we get our next witnesses to the table. We are suspended.

● \_\_\_\_\_ (Pause) \_\_\_\_\_

●  
● (0935)

**The Chair:** If all the committee members could please take their places at the table, we'll try to recommence immediately.

I want to welcome all of our witnesses who are with us today.

Thank you very much. I'm sure that most if not all of you were in the room observing the proceedings during the first panel's presentations. I would ask your co-operation, as I did with the first panel. If you can make your comments as brief and succinct as possible, without, of course, jeopardizing the content of your presentations, it will be greatly appreciated by the committee.

Our initial presenter, for 10 minutes or less, is Monsieur Thibodeau.

The floor is yours, sir.

● (0940)

**Mr. Marc Thibodeau (Director General, Labour Relations and Compensation, Canada Border Services Agency):** Good morning, Mr. Chair, and honourable members. My name is Marc Thibodeau and I'm the director general of the labour relations and compensation directorate at the CBSA, the Canada Border Services Agency.

I'd like to thank the committee for the invitation to speak to you today on your review of the Public Servants Disclosure Protection Act.

[*Translation*]

As the committee has heard, the main objectives of the Public Servants Disclosure Protection Act, the PSDPA, are to promote ethical practices in the public service and to create a positive environment and confidential process for public sector employees and others to disclose wrongdoing in the workplace without fear of reprisals.

While the Treasury Board Secretariat is responsible for the broad PSDPA policy framework, each department and agency is responsible for implementing its own processes and internal accountability mechanisms under the act.

[English]

CBSA is a dynamic organization of 14,000 employees which facilitates legitimate travel and trade while keeping the border safe and secure. Our operation runs 24 hours a day, seven days a week, and we have a mix of uniformed and non-uniformed employees, some with enforcement responsibilities.

As a law enforcement organization, CBSA has a culture that is different from that of a regular office environment. To that end, we have a comprehensive induction and training program for all of our front-line recruits at the CBSA College, where integrity is part of the program. Our officers emerge from the program highly trained, aware of their rights and obligations, and supported by an engaged union. In support of the objectives under the PSDPA, the CBSA has implemented an integrity strategy that is integral to the relationships among the agency, employees, partners, and clients. The strategy outlines expected employee behaviours as outlined in the CBSA code of conduct and the Values and Ethics Code for the Public Sector, which form parts of their conditions of employment.

The strategy is built on three pillars. One pillar is proactivity, under which expected standards of conduct and disciplinary consequences for misconduct are communicated regularly, and under which we investigate suspicions of misconduct immediately. The second is a “no wrong door” approach in which our specialists guide employees towards the appropriate avenue to have their issues addressed, no matter how the issue is brought to our attention. The third is our motto of “no stone unturned”. Issues are tracked and reviewed using numerous tools such as misconduct investigation, workplace assessment, and, where necessary, criminal investigations. These three pillars are in addition to the pre-employment reliability screening process.

[Translation]

Mr. Chair, the CBSA promotes a culture of open communication. Supervisors at all levels are expected to foster and demonstrate ethical leadership. Management is expected to identify and resolve issues including misconduct in an appropriate and timely manner. We provide managers with tools and resources to help them fulfil their responsibilities, including PSDPA training. It is critical that employees be aware of the PSDPA and the many other internal disclosure and recourse processes that exist. Promoting this awareness is key to ensuring that they understand their rights and where to turn for assistance.

[English]

We aim to provide multiple paths whereby everyone can confidentially report alleged misconduct, and we aim to do so consistently across the country. Should agency employees wish to report misconduct, their complaints can come through a number of avenues, such as their supervisor or union referral or through an online or in-person submission.

Furthermore, confidential disclosure of wrongdoing under the PSDPA can be made to their supervisor, the CBSA senior officer for internal disclosure, or externally through the Public Sector Integrity Commissioner. As a first step, we engage with employees to discuss their disclosure of wrongdoing, and we outline the disclosure process confidentiality provision and explain that the allegation must meet

the threshold of the act's definition of wrongdoing for us to investigate. Finally, we underline that the act protects employees against reprisal and explain how to make a complaint to the Public Sector Integrity Commissioner in the event of an alleged reprisal.

• (0945)

In order to determine if an investigation is warranted, we seek to answer the following: whether there is another recourse mechanism available to review the allegations; whether the matter, if proven to be founded, meets the act's definition of “wrongdoing” and the precedents set by the Integrity Commissioner; and, whether the issue is one of public or personal interest.

In the cases that will not be investigated, employees will receive an explanation, with a decision in writing, and will be apprised of other recourse mechanisms available to them—for example, where appropriate, the informal conflict resolution process.

Since 2013-14, an average of 38 individuals per year have sought advice or proceeded with one or more disclosures. In 2015-16, the CBSA reported that it had received 93 allegations and carried forward 25 more, but let me share some details to provide greater meaning to these numbers.

First, 61 of these allegations stem from two employees. After a preliminary review, 16 of these have been retained for more detailed analysis. Furthermore, looking at the 70 allegations that were not acted upon, one employee ceased the disclosure process, 23 were referred to other processes, and 46 did not meet the threshold for investigation under the act.

[Translation]

To conclude, in pursuing our agency's important mandate, CBSA employees interact with millions of individuals and goods, with domestic and international partners, with law enforcement organizations, and with industry stakeholders. As such, upholding the public's trust and promoting a safe and ethical workplace are matters we take seriously.

I would be happy to answer any questions the committee may have.

[English]

**The Chair:** Thank you very much. I appreciate your brevity, Mr. Thibodeau.

Next up, representing the Royal Canadian Mounted Police, we have Mr. MacMillan.

**Assistant Commissioner Craig MacMillan (Assistant Commissioner, Professional Responsibility Officer, Royal Canadian Mounted Police):** Thank you, Mr. Chair.

I've heard your words, and I'll try to keep it to seven minutes.

I am the professional responsibility officer for the RCMP, and with me is Ms. Jo-Anne Taylor, the manager of our PSDPA office.

The RCMP has undertaken a number of legislative, policy, and procedural initiatives as part of our approach to handling disclosures of alleged wrongdoing. We have just under 30,000 employees, comprising 18,000 regular members, who are police officers; 4,000 civilian members; and about 6,500 public service employees or PSEs. While members and PSEs are hired under different acts of Parliament, all are considered public servants for the purposes of the PSDPA.

It's important for the committee to recognize that the RCMP was not initially included in the proposed legislation and was only included at later stages, which necessitated certain provisions in the PSDPA to accommodate the fact that the framework for dealing with certain matters in the RCMP, such as discipline, was prescribed in the RCMP Act. That explains why certain things may not be dealt with by the Office of the Public Sector Integrity Commissioner or may be put on hold pending the completion of RCMP processes. For example, the decisions of our conduct adjudicators are not subject to wrongdoing complaints.

Since the coming into force of the PSDPA in 2007, we have followed the advice that the spirit and intent of the legislation is to avoid duplication of processes. On the legislative front, the RCMP Act recently underwent significant and substantive amendments, with the coming into force of the Enhancing Royal Canadian Mounted Police Accountability Act.

The accountability act provided the flexibility to allow for a more seamless response to disclosures of wrongdoing under the PSDPA, such as aligning the new conduct management process and the investigation of disclosures of wrongdoing. A specific example here is that, as the senior officer in the RCMP, I am now the delegated conduct authority to deal with discipline, which we now call "conduct", in cases involving PSDPA allegations. We also have new Commissioner Standing Orders, which permit the RCMP senior officer to better balance responsibilities, requirements, and rights under the PSDPA and the RCMP Act.

In terms of policy-related initiatives, the RCMP has developed a new PSDPA policy for all RCMP employees, implemented a new code of conduct for RCMP members, introduced a new code of conduct for RCMP PSEs, and created a conflict of interest directive for all RCMP employees that consolidated over 30 previous policies or instruments.

It is important to note that both the code of conduct applicable to members and the code of conduct applicable to PSEs adopted a more positive, responsibilities-based approach to conduct, and both contain an obligation to report concerns relating to misconduct. The RCMP's PSDPA policy also affords the senior officer the opportunity to assemble an assessment committee to assist in confidentially reviewing disclosures of alleged wrongdoing against a template containing applicable assessment criteria. While the RCMP recognizes that OPSIC has exclusive authority for investigating complaints of reprisal under the PSDPA, the RCMP's PSDPA policy includes an internal reprisal process, as do a number of other internal processes, such as harassment and grievances.

In terms of our procedures, in December 2013, the RCMP implemented the workplace reporting system, or WRS. It is a confidential and centralized way for employees to report workplace

issues through the professional ethics office, which reports to me. The WRS works when employees are unsure how to voice their concerns or when established reporting methods are not appropriate or possible. This process respects the confidentiality requirements of the PSDPA and provides another avenue of reporting for all employees. Between 2014 and 2016, the WRS dealt with 95 requests for assistance, three of which specifically involved alleged wrongdoing under the PSDPA. Additionally, RCMP personnel responsible for the harassment process have been instructed to inform their clients of the reprisal complaint process offered by OPSIC, as well as internal procedures to address concerns of alleged reprisal, which is also reflected in our policies.

PSDPA training is delivered either upon request or through in-service training on leadership development, such as our supervisor development program, manager development program, and executive or officer development program.

In terms of our activity under the statute, the RCMP has posted instances of founded wrongdoing three times since the PSDPA came into force, most recently in fiscal year 2013-14. These cases have touched on concerns with financial signing authorities, contract administration, and travel expenses. Overall, we are presently dealing with the 16th case involving alleged wrongdoing under the PSDPA.

With regard to annual reporting to the Treasury Board Secretariat on the PSDPA, as committee members are likely aware, when we talk about disclosures, we are really talking about allegations, given the TBS direction that if a disclosure contains multiple allegations, they are to be counted as separate disclosures, one per allegation. In the RCMP's 2015-16 PSDPA annual report to TBS, we reported having received 12 inquiries and eight disclosures.

• (0950)

On any reading, the PSDPA is complicated and challenging in terms of how it is drafted.

In terms of areas of comment for the RCMP, one aspect is the premature release by OPSIC of information related to a reprisal matter when the RCMP may have ongoing, outstanding processes or investigations of its own.

In a recent case, as a result of *El-Helou v. Courts Administration Service* from the Federal Court, OPSIC followed the requirements arising from that decision and disclosed to the complainant the information it had gathered as part of its reprisal investigation before the RCMP had completed its investigation of the initial alleged wrongdoing.

The provision of information by OPSIC to complainants in such circumstances could influence the complainant and/or subsequent investigations. Clearly, it is not satisfactory to have one investigative body under an obligation to disclose information before another body has completed its investigative mandate. It may be that some clarification can be provided in the PSDPA with respect to the competing tensions faced by OPSIC as a result of this Federal Court decision.

More recently, the RCMP received a letter from OPSIC that indicated that because the RCMP's code of conduct applying to members is in a regulation, a breach of the code of conduct not only results in a potential wrongdoing under PSDPA's paragraph 8(e), "a serious breach of a code of conduct", but also constitutes a potential wrongdoing under paragraph 8(a), a breach of a regulation.

In other words, a PSE will only have committed a wrongdoing involving a breach of the code of conduct where it is "serious". However, for an RCMP member, a breach of the code of conduct, whether or not it is serious, will qualify as a wrongdoing because the code of conduct is in a regulation. As a result, members are potentially liable for a finding of wrongdoing that is lower than and different from that of a PSE, which would not appear to be in accord with the intent of the PSDPA in its treatment of public servants.

Relatedly, consideration may also be given to clarifying subsection 6(1) of the PSDPA to indicate that the RCMP's obligation to establish an organizational code of conduct is met, for members, through the existing conduct under the regulations.

Finally, clarification at sections 43 and 44 of the PSDPA, regarding the scope of the confidentiality requirements in section 22.3 of the Privacy Act, and section 16.5 of the Access to Information Act, would assist the RCMP and potentially other departments, as there is some debate about the scope of confidentiality requirements pertaining to information that was not created for an investigation into wrongdoing, but rather was obtained in the course of that investigation.

Thank you for the opportunity to appear today.

● (0955)

**The Chair:** Thank you very much, sir.

Madame Renaud.

**Ms. Joanne Renaud (Director General, Audit, Evaluation and Ethics, Communications Security Establishment):** Good morning, Mr. Chair, and members of the committee.

My name is Joanne Renaud. I am the director general of audit, evaluation and ethics at the Communications Security Establishment, known as CSE.

It is my pleasure to appear before you today as you undertake your review of the Public Servants Disclosure Protection Act, the PSDPA.

[*Translation*]

As the senior officer responsible for receiving and acting on disclosures of wrongdoing, I am grateful for the opportunity to participate in this important discussion and share with you the internal mechanisms that CSE has in place for the disclosure of wrongdoings.

Since this is my first time appearing before this committee, by way of background, allow me to begin by introducing CSE and its mandate. CSE is one of Canada's key security and intelligence organizations, and has been in the business of protecting Canadians for over 70 years. Our mission stems from our three-part mandate under the National Defence Act.

[*English*]

The first part of our mandate allows for the collection and analysis of foreign signals intelligence. CSE acquires and uses information from the global information infrastructure to provide foreign signals intelligence based on the government's intelligence priorities. It's important to emphasize that CSE targets only foreign entities and communications, and is prohibited by law from directing its activities at Canadians anywhere or at anyone in Canada.

The second part of our mandate allows for cyber defence and protection. CSE provides "advice, guidance, and services to help ensure the protection of electronic information and information infrastructures of importance to the Government of Canada." Our cyber and technical expertise helps identify, prepare for, and respond to the most severe cyber-threats and attacks against computer networks and systems, and the information they contain.

Finally, the third part of our mandate allows us "to provide technical and operational assistance to federal law enforcement and security agencies in the performance of their lawful duties." As Canada's national cryptological agency, CSE possesses unique capabilities and expertise that may be used to assist a requesting law enforcement or security agency, under its legal authority. These activities are subject to any limitations on the requesting agency's legal authority, including any applicable court warrant.

[*Translation*]

Lawfulness and protecting the privacy of Canadians are enshrined in our mandate, and are also a fundamental part of our organizational culture. CSE employees undergo a rigorous security screening process and maintain the oath of secrecy, as well as the highest standards of security. We respect and protect the privacy of Canadians in accordance with the Canadian Charter of Rights and Freedoms, our legislation and Canadian privacy laws.

In fact, the extremely sensitive nature of our work requires us to be even more vigilant, and we take this responsibility very seriously. As public servants working in a classified environment, it is critical that we retain the trust of the government and of Canadians. As a result, CSE has multiple structures in place to ensure that we continue to operate lawfully.

These include executive control and oversight, embedded policy compliance teams in our operational areas, an on-site legal team from the Department of Justice, and active ongoing monitoring of internal processes.

In addition, all of CSE's activities are subject to robust review by the independent CSE Commissioner. The CSE Commissioner has full access to CSE employees, records, systems and data.

[English]

Furthermore, I am proud to share with you that just a few weeks ago, we celebrated the third anniversary of the most recent version of the CSE values and ethics charter. The charter articulates our most cherished values of sustainability, integrity, lawfulness, innovation, collaboration, and agility, and sets high standards for professional behaviour to uphold these values.

As you know, CSE requires exceptional treatment under the PSDPA for reasons of national security. As such, the charter provides an internal mechanism for employees to discuss or report serious ethical issues, including a perceived or suspected wrongdoing. Such a mechanism is required for CSE to be compliant with section 52 of the PSDPA, and has been vetted by Treasury Board and is consistent with CSE's values.

• (1000)

In accordance with the charter, any CSE employee who believes they have witnessed or have knowledge of an alleged wrongdoing in the workplace is encouraged to disclose the matter to his or her manager, a union representative, labour relations, the manager of the ethics office, or me, as the senior officer.

As the senior officer, I am responsible for receiving and reviewing these disclosures of wrongdoing, and establishing if there are sufficient grounds for further action and if resolution is appropriate. Similarly, any employee who believes he or she is being asked to act in a way that contradicts the values and ethics set out in the charter can report the matter directly to me. They can be accompanied by a trusted person such as a colleague or union representative.

If neither option seems reasonable or appropriate, a disclosure may be made directly to our deputy head, the chief of CSE. Should a situation occur where an employee feels strongly that a perceived wrongdoing cannot reasonably be addressed within CSE, in such instances employees are reminded that one of the duties of the CSE commissioner, as laid out in the National Defence Act, is to undertake any investigation that he or she considers necessary in response to a complaint.

[Translation]

I am responsible for preparing an annual report to the chief on the number of disclosures received, actions taken, investigations initiated, recommendations made, as well as any identified systemic issues and recommendations for improvement.

The chief in turn is responsible for reporting disclosures made and related issues as part of the annual report to the Minister of National Defence. If an allegation is brought forward that does not meet the criteria of an alleged wrongdoing, I can also direct CSE employees' concerns for consideration and possible handover to other redress parties including audit, management, personnel security, labour relations and our internal counselling and advisory program.

It's important to stress that employees are protected from reprisal for having made a disclosure or having co-operated in an investigation associated with a disclosure. CSE is committed to protecting the identity and privacy of persons involved in all matters related to disclosures of wrongdoing. All information obtained in the course of an investigation is handled and stored in accordance with

established procedures for handling and storing protected or classified information. In addition, all information collected as a result of a disclosure is treated in a confidential and discreet manner.

[English]

I will conclude my remarks by stating that I am confident in the internal mechanisms that CSE has in place for the disclosure of wrongdoing. My confidence stems from the professionalism and commitment of CSE's highly skilled workforce in carrying out their duties in an ethical and professional manner.

We at CSE know that values and ethics play a fundamental role in maintaining public confidence in the integrity of CSE. As a result, we will continue to strengthen our ethical culture and maintain high standards of behaviour in everything we do.

Thank you for inviting me here today. It will be my pleasure to answer any questions you might ask.

**The Chair:** Thank you all.

As I mentioned earlier, colleagues, we will have one complete seven-minute round of questions. We will begin with Mr. Ayoub.

[Translation]

You have seven minutes.

**Mr. Ramez Ayoub (Thérèse-De Blainville, Lib.):** Thank you, Mr. Chair.

I thank the witnesses for being with us today.

There is a common guiding principle in the statements we have heard to date, and that is a good thing. We are talking about the Public Servants Disclosure Protection Act, and so we are talking about confidentiality and the protection of disclosure, so that people will feel a sense of trust if they are to go before the organizations and disclose wrongdoings they feel are worth disclosing.

Some people like myself are not used to interpreting the results of the statistical table regarding disclosure in federal institutions. As a member of Parliament, I have a role to play as legislator which consists in making laws, amending them and improving them. I would like to know your interpretation of the zero that appears in some columns, that is to say where disclosure led to no findings of wrongdoing nor corrective measures.

How do you interpret those figures? The question is addressed to Mr. Thibodeau and Mr. MacMillan, as well as to Ms. Renaud.

• (1005)

**Mr. Marc Thibodeau:** Thank you for your question.

The Public Servants Disclosure Protection Act is a last resort mechanism for issues that are not covered by other mechanisms. In that context, a lot of issues were raised and resolved through other processes. At the Canada Border Services Agency, the available information shows that on average, four cases per year of disclosure lead to adjustments and improvements to certain processes.

Last year, there were no disclosures. Generally speaking, even an unfounded disclosure can lead to corrective measures being taken. The methodology used to bring forward the information may mean that there are more zeros in the table than what really happens in reality would warrant. In the case of the agency, I would say that the zero figure applies more to disclosures that led to a finding of wrongdoing than to disclosures that led to corrective measures.

**Mr. Ramez Ayoub:** Thank you, Mr. Thibodeau.

Mr. MacMillan, you have the floor.

[English]

**A/Commr Craig MacMillan:** *Merci.* I would echo the comments of my colleague.

You have to understand this, I think, in two ways.

One is to consider whether there is a legal framework under which employees can have protection, if necessary, if they come forward with something. I think the general view would probably be that there are protected disclosures that are defined and that the category is fairly broad. In the RCMP's instance, because employees have an obligation to report misconduct, they have fairly significant protection around that.

The other part is the climate, which is what I think you're more alluding to. There is a percentage of employees who simply aren't going to report ever, and there's a percentage of employees who are not actually going to approach—

[Translation]

**Mr. Ramez Ayoub:** Why?

[English]

**A/Commr Craig MacMillan:** Well, I think they are never going to have confidence in whatever you build. You try to build something that people are going to have confidence in generally, and I'm not of talking broad numbers here, but—

[Translation]

**Mr. Ramez Ayoub:** Are we talking about the law of silence at the RCMP?

[English]

**A/Commr Craig MacMillan:** No, I'm not talking about the blue wall of silence. I've worked in provincial, federal, and municipal government, and there are in my experience employees who are not going to be persuaded that coming forward with allegations is a good thing to do—a small percentage.

There is another percentage of employees who are not going to go to an external framework. In my role I've experienced employees who, when you raise OPSIC with them, don't want to hear about it; they don't want to deal with it. They actually have confidence in the organization to deal with it.

But to get directly to your question, they might not trigger the PSDPA as a way of dealing with their concerns. I don't think you should read the numbers of PSDPA disclosures in isolation from other things that an agency may be doing by way of reports that come forward of things that are broadly understood as wrongdoing, but that are managed through other processes or for which there are disagreements about how things are approached.

**Mr. Ramez Ayoub:** Does it apply to the GRC only or apply to every kind of...?

**A/Commr Craig MacMillan:** I think my colleagues partly answered that in saying that every agency will have different processes, and your previous witnesses explained that as well. But they permit employees to come forward, and it's not like one-stop shopping. It may be to the extent that they come forward with something, but where that goes into the different streams or avenues is sometimes dictated by the law. It's sometimes dictated by the complainant's wishes.

**Mr. Ramez Ayoub:** I've got only two minutes. I just want to move on a little bit further.

[Translation]

As I said, our role is to improve and amend legislation. Do you have any suggestions? Is there a particular improvement to be made to the Public Servants Disclosure Protection Act, the lack of which at this time is preventing you from doing the work you need to do? Perhaps no such improvement is needed. Perhaps the law is perfect.

[English]

**A/Commr Craig MacMillan:** I didn't want to take up the time.

It's a complicated piece of legislation, and the notion of having experts on it widespread throughout the agency, I think, is not one that's helpful. You're going to have to have dedicated experts who understand how it works, and you're going to have an access point to them. That's one of the things we try to do in the RCMP: consolidate things a little bit to make it more seamless. That's why I have the possibility of imposing discipline.

•(1010)

**Mr. Ramez Ayoub:** That piece of legislation is very complicated. Did you address that complication with any authorities?

**A/Commr Craig MacMillan:** I don't think you can uncomplicate it, because when you're dealing with reprisals and wrongdoings and you've got other legislative provisions for us, and agencies have grievances and other processes, it's by its nature going to be complicated. I've identified three specific areas around which we would like some consideration, which are available in my comments.

I guess the question is, philosophically, whether you are in the right place, and I think the answer probably is yes. But from the comments I've been hearing, the question is whether this is supposed to be something that's dealing with every complaint a concerned employee has, or something that's to deal with the more serious things.

I read the legislation as referring to gross misconduct, to serious breaches. It's at the higher end, and that's where you want these matters to be going.

[Translation]

**Mr. Ramez Ayoub:** Thank you, sir.

[English]

**The Chair:** Thank you very much.

Mr. McCauley, you have seven minutes, please.



**Mr. Kelly McCauley:** Thanks for joining us. I appreciate your feedback.

Mr. MacMillan, I just want to touch on a very touchy subject; I just want to go to it. It's the horrendous number of harassment issues that have come to the RCMP.

I'm just curious. You touched on what you viewed as wrongdoing. Was the ignoring of all these complaints within the definition of wrongdoing? How do we change the act so that we do not have a repeat of such widespread issues?

**A/Commr Craig MacMillan:** I would see the PSDPA as capturing those that have been very badly dealt with. But in general, harassment type complaints should run through a process that's been created to deal with the harassment complaints that come forward. Last year, we had 242 complaints of harassment. That's a 60% increase.

While I could sit here and tell you that means that our employees have more confidence, I don't know what it means. It's a one-year increase. We've averaged 152 harassment complaints over the last nine to 10 years. Of those 152, on average, 3% are for sexual harassment. It has to be unpacked a little bit to understand that sexual harassment is an important and serious issue within harassment, but I'm not sure how—

**Mr. Kelly McCauley:** I'm not referring to the actual harassment itself, which is obviously bad enough, but it seemed that it was endemic and that it was getting reported and that this level was ignoring it. To me, that would have been a level of wrongdoing that had to be reported. Is it just not part of your definition of wrongdoing?

**A/Commr Craig MacMillan:** Well, whether it were wrongdoing would be fact-specific. If a manager were consistently not dealing with harassment within her or his unit, you could get a situation of gross mismanagement of its not being dealt with. But if it's purely neglect, a portion of that would be captured by the conduct regime, which we've made more stringent with recent policy changes so that it's very clear that supervisors have responsibilities and that if they're not acting on them, we're going to act on these when it comes to our attention.

**Mr. Kelly McCauley:** Do you believe that you've had a better shift or a better understanding by everyone about the disclosure act that might address this?

**A/Commr Craig MacMillan:** We did a climate survey a number of years ago, which showed us that we had a lot of work to do in that area. We've gone through a sea change since 2014 with the recent amendments. Quite frankly, I think our employees are kind of overwhelmed with the amount of information landing on them on huge changes.

For example, our conduct system went from an average number of discipline cases in the high 200s to 741 the first year out. We're down to the mid-400s. This year, it's too early to say where we're at. But clearly to me, I'm not getting complaints that performance has been improperly dealt with as misconduct. The system that we had previously wasn't getting the right cases into that conduct system, and I think it will better capture them, and we have made it clear that there are responsibilities around harassment that—

**Mr. Kelly McCauley:** Is it safe to say that you're making progress?

**A/Commr Craig MacMillan:** Yes, I would say there's progress being made, but there's still a lot to be done.

[Translation]

**Mr. Alupa Clarke (Beauport—Limoilou, CPC):** Mr. Thibodeau, I have a few questions for you.

You specify in your notes that briefing sessions on the act are provided to your employees. We have heard witnesses from other departments, and this is the first time we have heard about such briefing sessions. That is interesting.

How many briefing sessions do you hold per year, or per month?

**Mr. Marc Thibodeau:** Thank you for the question.

Your question touches on several aspects.

For the employees as a whole, we have put in place an online training session on values, ethics and disclosure of wrongdoing. I should add that 84% of staff at the agency have completed their training.

As for recruits, this training is given before they arrive at the CBSA College. They take part in a discussion on values and ethics as soon as they arrive. In addition, the director general of security gives a presentation explaining the types of investigations the agency conducts, as well as the various allegations conducive to investigation.

Toward the end of their studies at the college, the recruits are invited to a session that is usually held at the end of a day. The president of the union talks to them about employer-employee relations. For my part, I broach issues related to ethics, as well as to situations where in a seemingly totally innocuous context we may be in the presence of people seeking to obtain information on issues that are only of concern to us.

• (1015)

**Mr. Alupa Clarke:** Have you been providing these briefings, either online or in person, since the act came into effect?

**Mr. Marc Thibodeau:** When I joined the agency in 2011, they were already being given.

At that time, we went to all the regions of Canada to give presentations on the code when it was revised, and we talked among other things about the disclosure of wrongdoing.

**Mr. Alupa Clarke:** I would like to take advantage of your presence Mr. Thibodeau, since you are also responsible for remuneration, to put a question to you about that.

Have the employees at the Canada Border Services Agency had a lot of problems with the Phoenix pay system? Are you suffering from that situation?

**Mr. Marc Thibodeau:** I would like to draw your attention to a particular characteristic of the agency: our staff still includes compensation advisors. The Canada Border Services Agency conveys information on remuneration to Public Services and Procurement Canada, which then issues the cheques.

**Mr. Alupa Clarke:** Are there cases where employees have not been paid at all?

**Mr. Marc Thibodeau:** We have had such cases, and there are challenges. Every two weeks, that is every pay period, I follow up on salary advances we have to pay to employees who have not been paid because of a system error.

The agency has 14,000 employees. Since Phoenix was brought in, we have paid out between 20 and 30 salary advances.

[*English*]

**The Chair:** Mr. Weir, you have seven minutes.

**Mr. Erin Weir:** Thanks very much.

I'd like to start by asking if you can think of examples of whistleblowers in your agencies who would merit public recognition and thanks for their service.

**A/Commr Craig MacMillan:** I'll start. We have created a commissioner's and a CO's commendation for individuals who show integrity and professionalism. We haven't nominated anybody or appointed that yet. There are individuals who have come forward with things that have been recognized, but none come to mind immediately.

**Mr. Marc Thibodeau:** I'll also add that we recognize people who display that kind of ethical behaviour. Right now there are no examples that come to mind.

**Ms. Joanne Renaud:** I have no example, either—sorry. Concerning confidentiality, it's always a delicate balance, which we need to consider as well. When we deal with the people individually, we make sure that we recognize the fact that it took courage and that we are going to work with them in that neutral context.

**Mr. Erin Weir:** One of the concerns our committee has is whether departments and agencies have the capacity to really follow up on disclosures in a proper way. Often, administering the act is a very small part of someone's overall responsibilities. Many people might not have the investigative training to really pursue these cases. Given that the three of you come from investigative organizations, I wonder if you could speak to that and how you think other departments that may lack that skill set could improve the way they investigate cases.

• (1020)

**A/Commr Craig MacMillan:** Within the RCMP, the PSDPA office is enshrined within the professional responsibility sector, which includes conduct, grievance recourse, adjudications, professional ethics, and human rights. I have a pretty good investigative capacity. I have a workplace responsibility support unit, which is a team of investigators that can be assigned to these files. Historically, we've been ad hoc, to the extent that you can't predict what skill sets you're going to need besides investigative abilities. It could be finances, it could be human resources, or it could be procurement. I think it's fair to say that we've pulled in different resources when we've needed them.

In terms of other agencies, I can't really speak for them. I know we'd be open to assisting them if we had to, and we've had some dialogue with other agencies where necessary.

**Mr. Marc Thibodeau:** Thank you.

From a Canada Border Services Agency's perspective, we have a team in the internal disclosure office with two former PSAC employees who have had the training. From that perspective, we feel that we're well covered. We also have professional conduct, professional standards investigations that are available internally to the organization—not to my team, but to the organizations—which are available should there be a need.

We've also used external resources where that was appropriate in terms of volume or, primarily, where we had individuals come on board and do those services. If I have required further technical expertise, there are some elements of that nature that could be covered, for example, forensic accounting, if that were becoming an issue. We feel well equipped. Other government agencies would probably want to articulate and focus on the investigative skills, the skill set, that is available in many places.

**Mr. Erin Weir:** Okay.

**Ms. Joanne Renaud:** I agree. In our case, we also have different skill sets. When it relates to a disclosure of wrongdoing investigation, there's only the manager of the ethics office, who is also looking at and working on the disclosure of internal wrongdoing, or me. We are a small organization, so we're not facing that many cases.

If we were facing cases that required more expertise than we had on-site, we would look at getting outside consulting help. We also have access also to certified fraud examiners and different types of people, depending on what the situations are. We do adjust based on that. We make sure that we keep developing and doing continuous training, as well.

**Mr. Erin Weir:** Sure.

I have the privilege of representing the RCMP Depot, and our chair used to represent that facility, so I know that we're very proud of the Royal Canadian Mounted Police. I want to ask specifically whether you think it makes sense for RCMP officers to be subject to the act or whether you think it would be better to have something like National Defence has, where members of the Canadian Forces are subject to a similar but separate regime for whistle-blowing?

**A/Commr Craig MacMillan:** The policy decision on that was made when the PSDPA was created, and we were included. In our present circumstances, I think we could present a very reliable and defensible process that's separate from the PSDPA. I think, given recent history, I wouldn't be proposing any major changes in that regard, because we need to ensure that we have the confidence of employees.

To go back to my earlier comment, I don't want to make it sound like.... You know, there's that small percentage who are never going to come forward with complaints. You have to get the large proportion. They have to have the confidence that they're going to do that. I guess the backstop is that OPSIC is available to those employees who aren't satisfied.

Furthermore, we have external bodies such as the Civilian Review and Complaints Commission, which has a piece of our work that could be internal matters. There's the External Review Committee, which also has a piece. There are a number of external bodies that have jurisdiction over various aspects.

So the policy decision, as I see it, has been made, but it causes difficulties. If you read the act, you'll see we have a stop time here; then we have to start it. There are certain things you can do; other things you can't do. I think it would be more seamless if it were an external process under which we managed it. But there would be critics of that approach, because they would not see it as having the externality they would like to see.

• (1025)

**The Chair:** Thank you very much.

Our final intervention will come from Madame Shanahan.

**Mrs. Brenda Shanahan (Châteauguay—Lacolle, Lib.):** Thank you very much, Chair. Thank you all for being with us here this morning.

It's very interesting to hear from so many different agencies about something that is very critical to the well-being, productivity, and overall performance of your various agencies. Thank you very much for sharing that information with us.

My concern comes back to the size of the funnel. When we look at the numbers, it almost seems that, regardless of the pool of employees we're drawing on, that funnel seems to be relatively small. We're getting closer to saying why that is, but I'd still like to explore a bit further.

Mr. Thibodeau, in your case it's 93 allegations that came in, and you talked to us about why that was—that they came from two different individuals. I'm sure you can expand on that a little more.

Still, when the focus is on individuals, one almost thinks that there is a certain type of individual who will come forward, but many more who will not. It's almost as though where there's smoke there's fire. Can we say that there are some systemic problems going on? I don't even want to go as far as pointing to wrongdoing as defined in the act, but what I like to see is that there are many allegations incoming and that measures are being taken to refer them or to take corrective action, and so on.

Could you speak a little bit more to the situation at border services?

**Mr. Marc Thibodeau:** Thank you very much for the question, Mr. Chair.

In my comments I spoke about the integrity strategy that we've articulated and developed to address some of our objectives concerning integrity in the workplace. The three pillars were about proactivity, there being no wrong door, and also about leaving no stone unturned.

When we see an intake of complaints coming from a specific area or about a specific issue, without compromising the confidentiality of the process it raises a flag. We look at all of our organizations from this perspective.

We make sure that those trends or flags that are coming up are pursued, whether within the PSDPA context or through other means. “Other means” may be from a proactive perspective whereby we will go to talk to the employees.

One of our most prevalent tools is to go with the ICMS to take the pulse, to do surveys, or to do what's called “workplace assessment”, which is trying to find out what's going on from a climate perspective, and identify issues and the cause of those issues in order to implement solutions.

**Mrs. Brenda Shanahan:** May I ask, are these the 23 that were referred to “other processes”?

**Mr. Marc Thibodeau:** Those 23 could be referred to either ICMS—the informal conflict procedure—or could have been referred to the grievance procedure or to other procedures: the harassment procedure, grievances, consultation, or a discussion with the manager.

What I'm talking about is that once we've identified an issue, it doesn't matter where it's coming from. From the standpoint of proactivity, and our leaving no stone unturned and having a “no wrong door” approach, we're making sure that once we're aware of an issue, we address it. We go; we pursue it. We find out, first of all, the legitimacy of the issue; then what the cause is; what the solution is; and then we implement a solution.

**Mrs. Brenda Shanahan:** Let me ask again, Mr. Thibodeau. Out of the 70 allegations that were not acted upon, one employee seized upon the disclosure process. Was nothing done after that?

Then 46 did not meet the threshold for investigation under the act. Can you tell us whether they were investigated otherwise? Were there avenues that could have been used for those investigations?

**Mr. Marc Thibodeau:** If there were other avenues that could have been used, they would have been discussed with the individuals. Informal conflict resolution or informal discussions would have been offered to the individual. At the end of the day, an informal process is voluntary and we need to have all the parties involved.

In the 46 cases that didn't meet the threshold for investigation under the act, it would have been the difference, for example, between the...and it didn't show because they.... Let me go back. The 61 allegations that we received were received at the end of the fiscal cycle, so they were reported as being open. We retained 16 allegations out of those 61. The difference between the 61 and the 16, which is 45, would show up as not meeting the threshold.

• (1030)

**Mrs. Brenda Shanahan:** You know, the numbers are important, but they're not giving us the whole story.

Mr. MacMillan, you mentioned that you had other reporting procedures too. It seemed like the funnel was opening up quite a bit more in the RCMP. Can you talk to us a little bit about that?

**The Chair:** You have one minute, sir.

**A/Commr Craig MacMillan:** You know, in my job I thought I'd seen it all, but there's stuff I just couldn't make up. I just couldn't, when I see some of the things our employees get involved in—and it's not a huge proportion, but less than half a percent year to year. That's talking the big funnel. Maybe it's misconduct, maybe it's PSDPA, maybe it's harassment, maybe it's other things.

Where I'm comfortable is that the processes are available on the front end, where it's a big funnel. Whether you're going to get through whichever spout it is in that funnel, into PSDPA or other things, I was just refreshing my memory on the definition of “wrongdoing”. To me, PSDPA is to deal with the more serious matters. A complaint of harassment can be PSDPA, but not every one of them is. It depends on the circumstances. They're very fact-specific.

So the numbers are not high, but I don't know of any jurisdiction with high numbers. There's lots of research and discussion around it. As I say, to me it's whether the legal architecture is in place. I think it's there. It might need some tweaking, but it's about whether you can impact the climate. Right now I do know, from a professionalism

study done by the Canadian Association of Chiefs of Police in 2012, that 78% of my regular members had a willingness to report misconduct. By comparison, our municipal and provincial counterparts were at around the mid-50% level.

**The Chair:** We'll have to stop you there.

Ladies and gentlemen, thank you very much for your attendance here today. It's been very helpful. As I mentioned to our first panel, if committee members have additional questions for you, they will submit them to you in writing. Additionally, should you have any additional information that you think would be of benefit to our committee in our deliberations, I strongly encourage you to send it to us directly, through our clerk, particularly if you have any suggestions on how the act could be improved.

Thank you very much.

Committee members, we will reconvene in just a couple of minutes to go in camera for committee business.

*[Proceedings continue in camera]*

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